

been met. There is no such evidence in the record.

First, BellSouth may pursue in-region interLATA authority under Track B if: (a) an unaffiliated ALEC failed to request access and interconnection arrangements from BellSouth by December 8, 1996, ten months after the Telecommunications Act of 1996 took effect; and (b) a Statement of Generally Available Terms and Conditions ("SGAT") has been approved by the Commission. BellSouth fails both tests. It is undisputed that TCG and other providers have submitted requests for access and interconnection in Florida within ten months after the effective date of the Act (see, e.g., Varner, Tr. 276, 280). BellSouth's initial 87 volume filing (Hearing Ex. 3 ) and Hearing Exhibit No. 1 confirm that numerous interconnection agreements, including TCG's<sup>1</sup>, were approved pursuant to the Act prior to December 8, 1996. Moreover, BellSouth's SGAT has not been approved — it was not even filed until September 18, 1997 (new Late-Filed Hearing Ex. 125), eight days after the conclusion of the final hearing. Thus, Mr. Varner had little choice except to admit that BellSouth recognizes that it does not qualify for consideration under Track B (Tr. 277, 278).<sup>2</sup>

Second, Track B can become available if BellSouth demonstrates and the Commission certifies that BellSouth has not, in effect, received a request for access and interconnection because all unaffiliated ALECs requesting access and interconnection have failed to negotiate in good faith as required by Section 252 of the Act or failed to meet the implementation schedules in their

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<sup>1</sup> TCG and BellSouth entered into an interconnection agreement pursuant to the Act on July 15, 1996. The Commission approved the agreement pursuant to the Act by Order No. PSC-96-1313-FOF-TP issued October 29, 1996.

<sup>2</sup> "Under Track B, which we do not believe we're under in Florida" (Tr. 278).

agreements.<sup>3</sup> Mr. Varner readily conceded that TCG and the other providers did not negotiate their interconnection agreements in bad faith (see, e.g., Tr. 276)<sup>4</sup>, and there is no record evidence which would support a finding to the contrary.

Finally, there is no record evidence to support a finding that all of the unaffiliated ALECs violated the terms of their interconnection agreements by failing to comply with an implementation schedule in an agreement.<sup>5</sup> No party has requested that the Commission make such a finding in this proceeding. In fact, such a finding would have no evidentiary support since BellSouth's interconnection agreements do not contain implementation schedules (Varner, Tr. 303).

**ISSUE 1B(a):**      **Has an unaffiliated competing provider of telephone exchange service requested access and interconnection with BellSouth?**

\*Yes. TCG and other unaffiliated competing providers have requested access and interconnection from BellSouth.\*

It is undisputed in this proceeding that unaffiliated providers of telephone exchange service have requested access and interconnection from BellSouth, and that BellSouth has entered into interconnection agreements with many of these unaffiliated providers (see, e.g., Varner, Tr. 276, 280). Moreover, these are "qualifying requests" in accordance with Section 271(c)(1)(A) of the Act. Mr. Varner testified that MediaOne, and possibly others, will provide residential service over their

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<sup>3</sup> See Sec. 271(c)(1)(B); Ameritech Order, infra, at par. 112.

<sup>4</sup> "We don't believe that's the case based on negotiations that we've had with the ALECs" (Tr. 276).

<sup>5</sup> There is, however, a wealth of competent substantial evidence demonstrating that BellSouth has failed to abide by the terms and conditions of its interconnection agreements by, for example, failing to provide carrier identification codes and meet point billing data to TCG and BellSouth's recent announcement that it will not pay TCG for termination of seven digit local calls carried by TCG to Internet Service Providers. See discussion infra.

own facilities at some future time pursuant to their present agreements (Varner, Tr. 276, 280).

**ISSUE 1B(b):**        **Has a statement of terms and conditions that BellSouth generally offers to provide access and interconnection been approved or permitted to take effect under Section 252(f)?**

\*No. BellSouth submitted a Statement of Generally Available Terms ("SGAT") to the Commission for approval subsequent to the hearing in this proceeding. The SGAT has neither been approved nor permitted to take effect. Moreover, the SGAT that BellSouth submitted is fatally flawed and the Commission cannot approve the SGAT nor permit the SGAT to take effect. Furthermore, the SGAT is irrelevant to this proceeding because ALECs have entered into binding interconnection agreements with BellSouth.\*

BellSouth filed its "Final Final Final" SGAT in this proceeding after the conclusion of the hearing, on or about September 18, 1997. At the time that TCG filed this Posthearing Brief, the final SGAT had not been approved by the Commission or otherwise permitted by the Commission to take effect. Moreover, even if the SGAT ultimately is approved, it is irrelevant to this proceeding because BellSouth "has received several requests for access and interconnection within the meaning of section 271(c)(1)(A)." SBC Oklahoma Order, at par. 66.<sup>6</sup>

The Commission cannot approve any of the SGATs that BellSouth has filed in this proceeding. Sections 252(f)(2) and 252(d)(1) of the Act mandate that the interconnection and network element charges in the SGAT be based on BellSouth's cost of providing the interconnection or network element. BellSouth's witnesses admitted that BellSouth did not file cost studies to support the prices in the SGAT (Varner, Tr. 312; Scheye, Tr. 611) and that many of the

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<sup>6</sup> Track B is not available if BellSouth has received requests for access and interconnection.

interconnection and network element charges in the SGAT are not cost based (Varner, Tr. 313; Scheye, Tr. 576, 616; see also Wood, Tr. 1974-75). Specifically, there is no cost basis for the selective routing price set forth in the SGAT (Scheye, Tr. 576). In addition, the prices set forth in the SGAT for loop distribution, network interface devices, and many other items are merely interim rates that have been established in arbitration proceedings, that may or may not be changed when the arbitrated rates become final (Scheye, Tr. 576-77): Without cost-based prices, the final SGAT fails to satisfy the applicable minimum statutory criteria of the Act and cannot be approved by this Commission.

**ISSUE 1C:** Can BellSouth meet the requirements of Section 271(c)(1) through a combination of track A (Section 271(c)(1)(A)) and track B (Section 271(c)(1)(B))? If so, has BellSouth met all of the requirements of those Sections?

\*No. Section 271 does not permit BellSouth to meet the requirements of Section 271(c)(1) through a combination of Track A (Section 271(c)(1)(A)) and Track B (Section 271(c)(1)(B)).\*

The Department of Justice has opined that Section 271(c)(1)(A) and Section 271(c)(1)(B) are mutually exclusive and therefore cannot be combined. See, Evaluation of the Department of Justice, In re Application of SBC Communications Inc. Et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma, CC Docket No. 97-121, at 41 (May 16, 1997). TCG concurs with the Department of Justice's analysis.

**ISSUE 2:** Has BellSouth provided interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(I) and applicable rules promulgated by the FCC?

\*No. BellSouth failed to demonstrate that it provides network access and interconnection services to its competitors that is at least equal in quality to that provided by BellSouth to itself, its

own customers, and its affiliates.\*

Checklist Item No. 1 requires BellSouth to demonstrate that it provides "Interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1)." Pursuant to Section 251(c)(2)(C) of the Act, BellSouth must provide interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." In its Local Competition Order<sup>7</sup>, the FCC concluded "that the equal in quality standard of Section 251(c)(2)(C) requires an incumbent LEC to provide interconnection between its network and that of a requesting carrier that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, or any other party." The FCC further concluded that an incumbent LEC must design its "interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within [its] . . . own network[]." The FCC's conclusions were not overturned by the Eighth Circuit in Iowa Utilities Board v. FCC,<sup>8</sup> wherein the Court expressly recognized that Section 251(c)(2)(C) requires incumbent LECs to provide interconnection that is equal in quality to the interconnection they provide themselves.

For purposes of the first checklist item BellSouth has the burden to demonstrate that, at a minimum, it has fulfilled the terms of TCG's Interconnection Agreement and that it provides

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<sup>7</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996. First Report and Order, CC Docket No. 96-98, 11 FCC Rcd. 15499, 15635 (1996), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997), *aff'd in part and vacated in part sub nom. Iowa Utils. Bd. v. FCC*, No. 96-3321 *et al.*, 1997 WL 403401 (8th Cir., July 18, 1997), Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Proposed Rulemaking, FCC 97-295 (rel. Aug. 18, 1997), *further recon. pending*; 47 C.F.R. § 51.309.

<sup>8</sup> Hearing Ex. 4, at 39.

interconnection to TCG and other ALECs that is equal to the quality of interconnection that BellSouth provides within its own network. BellSouth failed to adopt adequate performance measures and lacks sufficient performance measurement data to address this critical checklist item. As set forth below, the record evidence demonstrates that the interconnection that BellSouth provides to TCG is inadequate and substantially below parity. Further, BellSouth does not even provide all of the interconnection services that it is contractually required to provide to TCG pursuant to the BellSouth/TCG interconnection agreement.

**1. BellSouth's Petition Is Premature Without Adequate Interconnection Performance Measures and Standards**

The quality of the interconnection that BellSouth provides to facilities-based ALECs such as TCG is critical because facilities-based ALECs actually transfer local calls to and from BellSouth's network to their own network (Hoffmann, Tr. 3424). BellSouth is fully aware that it is important to establish "adequate service performance measurements to ensure that all telecommunications users in Florida receive high quality service" (Stacy, Tr. 1537). Yet, astoundingly, BellSouth has neither proposed nor adopted performance measures for blockage (Stacy, Tr. 1580), call completion, or other interconnection indicators. In fact, BellSouth has not agreed upon performance standards with any of the facilities-based ALECs in Florida (Stacy, Hearing Ex. 52, deposition transcript at 146-47).

In paragraph 212 of the Ameritech Order, the FCC required Ameritech to "ensure that its performance measurements are clearly defined, permit comparisons with Ameritech's retail operations, and are sufficiently disaggregated to permit meaningful comparisons." BellSouth's performance measurements fall far below these requirements. Until such time that adequate

performance measures and benchmarks have been established for call blockage, call completion, and the other measures of parity interconnection, BellSouth cannot fulfill its obligation to demonstrate parity and its Petition cannot be approved.

Mr. Stacy as much as admitted that BellSouth's performance measures are inadequate with his statement that BellSouth's proposed measures are only a starting point (Tr. 1537). The performance measures set forth in Mr. Kouroupas' late-filed deposition Exhibit No. 3 (Hearing Ex. 123) are more than just a starting point, specifically addressing the frequency of failure of local interconnection trunks, call blockage, and call completion. TCG's proposed performance measures provide the level of detail necessary to verify parity of interconnection and should be required by the Commission before recommending that BellSouth be authorized to provide in-region interLATA services. The information provided pursuant to TCG's proposed performance measures must be provided in such a fashion that TCG and the Commission can compare the service that each ALEC receives to the service that BellSouth provides to other ALECs, ILECs and its 100 largest customers (Hearing Ex. 4, at 39; Kouroupas, Tr. 3490; see also Iowa Utilities Board v. FCC<sup>9</sup>). The reports suggested by TCG will allow the Commission to make this determination based upon facts not conjecture. Simply put, in-region interLATA authority should be denied BellSouth until TCG and this Commission have the data to confirm that TCG and other ALECs receive interconnection service on parity with BellSouth's and its customers. Section 271(C)(2)(B)(I) requires nothing less. The absence of adequate performance measures and benchmarks for interconnection in this proceeding make it impossible for the Commission to find that the interconnection that BellSouth provides to TCG is at least equal in quality to that which it provides to itself and other parties

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<sup>9</sup> An incumbent LEC may not treat some competing carriers differently from others.

(Ameritech Order, at par. 61; Kouroupas, Tr. 3480).

BellSouth's Petition relies upon the performance measures that it has negotiated with AT&T, the performance measures proposed in the SGAT, and the reports that it routinely files with this Commission and the FCC (Stacy, Tr. 1529-30). BellSouth's reliance is misplaced. The reports that BellSouth routinely files with this Commission and the FCC are insufficient to ensure parity of interconnection under the Act. These reports do not include interconnection data that pertains specifically to TCG or even to facilities-based ALECs (Stacy, Tr. 1580; Kouroupas, Tr. 3487-88). The region-wide reports that BellSouth has provided in this proceeding do not address the interconnection issues that are critical to Florida's facilities-based ALECs such as TCG. The FCC has previously determined that these types of reports are not reliable to demonstrate nondiscrimination. Ameritech Order, at par. 61.

AT&T's performance measures cannot be relied upon in this proceeding. They have not even been finalized (Stacy, Tr. 1584; Hearing Ex. 55).<sup>10</sup> Moreover, AT&T does not provide facilities-based service in Florida. AT&T's performance measures are not intended to address the specific concerns of facilities-based providers (Kouroupas, Tr. 3486). They do not even address call blocking percentages on interconnection trunks (Kouroupas, Tr. 3483). Mr. Stacy admitted that facilities-based ALECs require different performance measures than ALECs that resell services (Tr. 1656) and that performance measures negotiated for one ALEC would not necessarily demonstrate nondiscriminatory performance for another ALEC (Tr. 1559).

The proposed performance measures in the SGAT are equally deficient. First and foremost,

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<sup>10</sup> Intervals for the services in section 2.1 of AT&T's Agreement have not yet been developed.



they do not comprehensively address the parity issue. all of the measures proposed by TCG in Mr. Kouroupas' late-filed deposition Exhibit No. 3 (Hearing Ex. 123). Second, even if the performance measures in the SGAT were adequate, BellSouth has not provided any reports in this proceeding based upon those measures. Third, SGAT benchmarks have not been developed. These benchmarks can only be developed from live data and BellSouth has conceded that the development of such data has only just begun (Scheye, Tr. 600-601). Fourth, BellSouth has not provided the benchmarks that it uses to measure its own network. Mr. Stacy admitted that performance measures cannot be used to determine whether there is discrimination unless the measures compare BellSouth's internal performance to its performance with the ALEC (Tr. 1560).

At this time TCG and BellSouth have not entered into an agreement that establishes adequate performance standards (Kouroupas, Tr. 3484-85). In addition, Mr. Scheye testified that the SGAT, presumably including the performance measures attached thereto, is "meaningless" to TCG and other providers that already have interconnection agreements (Tr. 743). Moreover, BellSouth is not even capable of providing reports for its negotiated and proposed performance measures (Scheye, 600-601; Stacy, Tr. 1609-10). Mr. Stacy testified that at least six months of data, and preferably twelve months, is required to provide statistically valid, reliable upper and lower performance parameters for various performance measures (Stacy, Tr. 1497; Hearing Ex. 52, deposition transcript of Stacy at 103; see also Kouroupas<sup>11</sup>, Tr. 3523 regarding need for at least six months of data). Yet BellSouth does not even have six months of data for many of its performance measures (Stacy, Tr. 1536, 1564).

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<sup>11</sup> Although BellSouth's counsel mischaracterized Mr. Kouroupas' testimony as creating a "goal line" that is moved back six months every time that a new competitor enters the market (Tr. 3506), Mr. Kouroupas merely testified that in this proceeding BellSouth was required to provide data for the six-month period prior to the proceeding (Tr. 3524-25).

Without established performance measures, similar to the detailed measures offered by Mr. Kouroupas (Hearing Ex. 123, Late-Filed Deposition Ex. 3), and benchmarks that are supported by at least six months of verifiable performance data (Stacy, Tr. 1497, 1498; Kouroupas, Tr.3523), TCG is relegated to the hope and prayer that BellSouth will one day fulfill its promise to provide interconnection services at parity. Such a situation is unacceptable to TCG and would ultimately lead to a reduction in the already minimal level of competition in the local exchange market. TCG's history with BellSouth shows that paper promises, even in the form of approved interconnection agreements, are less than reliable. For example, there is unrefuted record evidence demonstrating that BellSouth has not even provided the interconnection data that it is contractually required to provide to TCG pursuant to the Interconnection Agreement, which data is critical to insuring proper interconnection between BellSouth and TCG (Hoffmann, Tr. 3440 ). Specifically, BellSouth refuses to confirm TCG's Signaling System 7 ("SS7") point codes, and refuses to provide Interexchange Carrier Identification Codes ("CIC") and meet-point billing data. Now it appears that BellSouth will commit another breach of its interconnection agreement with TCG by attempting to unilaterally change the terms for reciprocal billing of local calls to Internet Service Providers ("ISP").

## **2. The Commission's Role in this Proceeding**

As set forth in Section 271(d)(2)(B) of the Act, the Commission's role in this proceeding is to determine whether BellSouth has demonstrated compliance with each of the requirements of subsection 271(c) of the Act, including the first checklist item. The first step in this process is the establishment of performance measures that fully address each checklist item. BellSouth has not developed performance measures that address interconnection for facilities-based ALECs (Kouroupas, Tr. 3483, 3494). Moreover, BellSouth has not provided data on the interconnection that

it provides for itself, without which there is no benchmark to determine whether BellSouth provides interconnection at parity. BellSouth's Petition is, and will continue to be, premature until such time as adequate performance measures have been developed and sufficient data has been collected which would allow BellSouth to demonstrate its compliance.

If adequate performance measures and benchmarks ultimately are established and presented to the Commission in a subsequent proceeding, the second step of this process would be for BellSouth to provide empirical evidence that addresses each performance measure, i.e., performance measure reports. These reports, which were not provided in this proceeding, would provide the Florida specific empirical evidence that must be proffered to this Commission before it can verify BellSouth's compliance with Section 271(c) of the Act.<sup>12</sup> BellSouth elected to exclude this requisite data from its voluminous filing. If for no other reason, the Commission must reject BellSouth's Petition for its failure to include performance measurement data that pertains specifically to Florida (see Ameritech Order, at pars. 61, 232; Kouroupas, Tr. 3487).

**3. BellSouth Fails to Provide Interconnection at Parity in Numerous Ways**

**A. BellSouth's Failure to Confirm SS7 Signaling Transfer Point Code Activation**

SS7 Signaling Transfer Point ("STP") code activation is required for the exchange of traffic between BellSouth and TCG (Milner, Hearing Ex. 33, deposition transcript at 192; Section IV.G of TCG's Interconnection Agreement). Without confirmation that SS7 point codes have been properly loaded, TCG has no assurance that the services marketed and provided by TCG will function

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<sup>12</sup> See Ameritech Order, at pars. 61 and 232.

properly when the customer is connected (Hoffmann, Tr. 3437, 3442). Pursuant to Sections IV.G<sup>13</sup>, V.G<sup>14</sup> and VI.C<sup>15</sup> of TCG's Interconnection Agreement, BellSouth is required to confirm the SS7 point codes. Moreover, BellSouth is the only party that can provide this critical information to TCG (Milner, Hearing Ex.33, deposition transcript at 180).

BellSouth has yet to confirm that TCG's point codes have been loaded into BellSouth's STPs (Hearing Ex. 118, deposition transcript at 32). Although TCG maintains that it should not be required to beg for data and information that BellSouth is contractually required to supply, Mr. Milner implied that BellSouth's failure to provide SS7 point code confirmation is justified because TCG never requested it (Hearing Ex. 33, deposition transcript at 182, 194).<sup>16</sup> In fact, TCG has requested SS7 point code confirmation from its BellSouth account team on several occasions (Hearing Ex. 118, letters dated April 10, 1997, October 8 and 11, 1996, and deposition transcript at 32). Mr. Milner's speculative excuses provide no justification for BellSouth's failure to live up to its contractual obligations. Once again there is irrefutable evidence that the testimony of a BellSouth witness was not credible and that BellSouth has not fulfilled its contractual obligations to TCG.

#### **B. BellSouth's Failure to Provide Interexchange Carrier Identification Codes**

Interexchange CICs must be loaded into TCG's switches to properly recognize the

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<sup>13</sup> "Signal System 7 ("SS7") connectivity is required at each interconnection point."

<sup>14</sup> "TCG shall utilize SS& signaling links, ports . . . ."

<sup>15</sup> "SS7 signaling is required for the provision of INP [interim number portability] services."

<sup>16</sup> Mr. Milner only questioned whether Mr. Argo or Mr. Lang had received such a request from TCG (Hearing Ex. 33, deposition transcript at 190). Mr. Milner did not even inquire from the members of the account team that BellSouth has assigned to TCG.

Interexchange Carriers that provide service to TCG's customers through BellSouth's access tandem (Hoffmann, Tr. 3436). These are the very same CIC codes that BellSouth's newly certificated interexchange carrier, BellSouth Long Distance, Inc., has insisted on receiving from BellSouth.<sup>17</sup> Section XVII.G<sup>18</sup> of the Interconnection Agreement between TCG and BellSouth specifically requires BellSouth to provide CICs to TCG. TCG has requested CICs from its BellSouth account team (Hearing Ex. 118, deposition transcript at 30). BellSouth still refuses to provide CICs to TCG (Milner, Hearing Ex. 33, deposition transcript at 178, 190). BellSouth's failure to provide CICs is a flagrant violation of TCG's Interconnection Agreement.

#### C. BellSouth's Failure to Provide Meet-Point Billing Data

Meet-point billing records are required for TCG to properly bill Interexchange Carriers for services provided by TCG (Hoffmann, Tr. 3435). BellSouth is yet to provide these records to TCG, leaving TCG unable to bill interexchange carriers for any of the interexchange calls that have been terminated at TCG's end office since the Agreement was entered into more than one year ago (Hoffmann, Tr. 3442). Pursuant to Section IV.L of TCG's Interconnection Agreement, BellSouth is required to work cooperatively with TCG to support the meet point billing arrangement by supporting the work of the Ordering and Billing Forum ("OBF") and implementing OBF changes to Multiple Exchange Carrier Access Billing ("MECAB") and Multiple Exchange Carriers Ordering and Design Guidelines for Access Services--Industry Support Interface ("MECOD") -- in other words, BellSouth is required to utilize the industry standards for meet point billing. Other Bell

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<sup>17</sup> See Docket No. 960902-TI, August 24, 1997 Staff Memorandum approved at September 9, 1997, Agenda Conference.

<sup>18</sup> "The parties agree to provide each other with the proper call information, i.e. originated call party number, CIC . . . ."

Operating Companies provide meet point billing data to TCG pursuant to a similar arrangement (Hoffmann, Tr. 3442). BellSouth refuses to provide this data to TCG.

Mr. Scheye testified that meet point billing is required in most, if not all, of BellSouth's interconnection agreements (Tr. 562). He also testified that BellSouth is capable of providing meet point billing to Florida's ALECs and that BellSouth currently provides meet point billing to independent LECs (Tr. 563). However, he could not explain BellSouth's discriminatory failure to provide this same type of data to TCG or to other ALECs as required by the interconnection agreements (Hearing Ex. 21, deposition transcript at 142).

**D. BellSouth's Refusal to Compensate ALECs for Termination of Calls to ISPs**

With a single letter, BellSouth has perpetrated another breach of its interconnection agreement with TCG, a breach which likely extends to all BellSouth/ALEC interconnection agreements in Florida. As demonstrated by Hearing Exhibit No. 17 and the testimony of Mr. Kouroupas (Tr. 3527) and Ms. Strow (Tr. 2403 ), on August 12, 1997, BellSouth attempted to unilaterally amend every one of its interconnection agreements by placing a limitation on reciprocal compensation for ISP traffic terminated by either party. Essentially, BellSouth has unilaterally determined that seven digit local calls placed by its end user customers to an ISP served by TCG or another ALEC are excluded from the determination of reciprocal compensation under the interconnection agreements (Milner, Tr. 950). As written, BellSouth's interconnection agreements contain no such limitation (Strow, Tr. 2403; Kouroupas, Tr. 3527).

Section 1.D of the Interconnection Agreement defines "Local Traffic" as "any telephone call that originates and terminates in the same LATA and is billed by the originating party as local call..."

The Interconnection Agreement's definition unambiguously includes traffic from end-user customers of BellSouth to ISPs end-user customers of TCG and other ALECs. Such calls both originate and terminate within the same LATA. In addition, the call from a BellSouth end user is billed as a local call. In proposing to treat such calls as non-Local Traffic, and therefore not subject to reciprocal compensation arrangements, BellSouth is egregiously and unilaterally breaching its Interconnection Agreement. This "interpretation" of the Interconnection Agreement language is contrary to the clear terms of the contract, defies common sense and is contrary to general industry understanding.

BellSouth has built its case on unsubstantiated promises that it will open its network to nondiscriminatory access at some future date. BellSouth's willingness to ignore the legally binding terms of its interconnection agreements undermines the credibility of such promises.

**E. BellSouth has Not Designed its Network to Meet the FCC's Guidelines and Has Failed to Provide the Redundant Routing BellSouth Utilizes Within Its Own Network**

A local call within BellSouth's network may travel through a number of alternative or redundant routes. A local call delivered to TCG's network from BellSouth's network, on the other hand, is restricted to a single route through BellSouth's access tandem (Hoffmann, Tr.3431-32). BellSouth's local traffic travels through an exclusive network of direct end office trunking with local tandem and access tandem overflow that provide the protection (against call blockage) of redundant routing (Stacy, Tr. 1551; Hoffmann, Tr. 3432). The local traffic exchanged between BellSouth and Independent LECs also travels through a redundant network of direct end office trunking and interconnection with local and access tandems (Scheye, Tr. 593). Traffic directed to TCG, other facilities-based ALECs, and Interexchange Carriers ultimately must travel through a designated group of trunks that traverse only through a designated access tandem. This traffic has no

alternative route (Hearing Ex. 22, Late-Filed Deposition Ex. 10, BellSouth's notes from the Teleport and BellSouth conference call concerning gateway service dated July 18, 1997; Hoffmann, Tr. 3431-32; see also Stacy, Tr. 1551). The lack of alternative routing exposes an ALEC to the risk of network failure due to a single point of blockage on BellSouth's tandem trunk (Hoffmann, Tr. 3433, 3441). The significant differences in these network designs do not meet the FCC's "indistinguishable" test.<sup>19</sup>

A blocked call can be rerouted and completed over another trunk group if the network architecture is redundant. Ameritech Order at par. 234. End office trunking is the industry standard for routing local traffic (Hoffmann, Tr. 3431). However, BellSouth's practice is to permit ALECs to interconnect at a BellSouth end office only for those one-way trunks that carry the ALEC's calls to BellSouth (Hoffmann, Tr. 3431-32). The network design to which BellSouth doggedly continues to adhere puts TCG at risk for a single point of failure, an unnecessary risk that could be eliminated if BellSouth would provide end office to end office trunking for traffic directed to TCG (Hoffmann, Tr. 3473). The FCC discussed this identical design differential in paragraph 249 of its Ameritech Order. In that case, the FCC determined that the interconnection facilities that Ameritech provides to ALECs did not meet the technical criteria and service standards that Ameritech uses within its own network.<sup>20</sup> Although the FCC's decision was not based entirely upon the lack of end office trunking for ALECs, the FCC did suggest that Ameritech should provide a comparison of rerouting for ALECs and its own traffic when it resubmits its petition. As set forth above, there are obvious disparities between the network that BellSouth utilizes and the inferior network BellSouth imposes

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<sup>19</sup> Local Competition Order, *supra*.

<sup>20</sup> Ameritech Order, at par. 255.



on ALECs. Due to this obvious discrimination in BellSouth's network design and the lack of the traffic rerouting comparison required by the FCC, this Commission cannot approve BellSouth's Petition.

Despite TCG's repeated requests, including a request at the May 5, 1997 meeting between TCG and BellSouth (Hoffmann, Tr. 3441) and a written request on April 10, 1997 to Mr. Fred Monacelli<sup>21</sup>, BellSouth continues to refuse to implement direct end office trunking to TCG and forces all traffic destined to TCG through an access tandem, thereby providing a network design for ALECs that obviously is inferior. Although Hearing Exhibit No. 57 is intended to lead one to believe that BellSouth has offered end office trunking to TCG, and that TCG was unable to decide where it wanted to interconnect, the Exhibit is based upon unsubstantiated hearsay and is factually inaccurate. Mr. Stacy, the sponsor of Hearing Exhibit No. 57, was not present at the meeting between TCG and BellSouth<sup>22</sup> and did not even recognize the name of the BellSouth employee who handled the negotiations with TCG (Hearing Ex. 52, deposition transcript at 101). Mr. Hoffmann did attend the May 5, 1997 meeting.<sup>23</sup> Mr. Hoffmann confirmed that at that meeting BellSouth refused to even discuss end office trunking (Hoffmann, Tr. 3441). BellSouth has persistently refused TCG's request for end office trunking (Hearing Ex. 118, deposition transcript at 20). TCG is ready, willing and able to accept BellSouth's offer of end office trunking if such an offer is ever made.

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<sup>21</sup> Hearing Ex. 118.

<sup>22</sup> See Hearing Ex. 21, late-filed deposition Ex. 10, letter to Mr. Hoffmann dated August 14, 1997.

<sup>23</sup> See Hearing Ex. 21, late-filed deposition Ex. 10, letter to Mr. Hoffmann dated August 14, 1997.

**F. The Level of Call Blockage Suffered By TCG is Excessive and Pervasive When Compared with the Almost Zero Level of Call Blockage Within BellSouth's Network**

Call blocking by BellSouth in the south Florida LATA is pervasive (Hoffmann, Tr. 3425; Hearing Ex. 118, deposition transcript at 10) even though there is available capacity within TCG's switched network at the time the blockage occurs (Hoffmann, Tr. 3429). TCG has received numerous complaints from its customers that have not been able to receive calls from BellSouth's end users due to this blockage (Hoffmann, Tr. 3429). In some cases, the blockage is due to incorrect translations that BellSouth performs in its end office switches (Hoffmann, Tr. 3425; Hearing Ex. 118, deposition transcript at 10). In other cases, the blockage results from BellSouth's failure to provide sufficient trunk capacity between BellSouth's tandems and TCG's switch (Hoffmann, Tr. 3427). In still other cases, the blockage results from the vastly inferior network design that BellSouth has selected for ALECs. The evidence shows that the call blockage is not caused by insufficient trunk capacity on the interconnection trunks that deliver calls from TCG's end users to BellSouth's network (Hoffmann, Tr. 3429). Unlike BellSouth, TCG appropriately monitors its trunks and installs the necessary additional capacity in a timely fashion (Hoffmann, Tr. 3429). Blockage occurs on the trunks that BellSouth provides to TCG (Hoffmann, Tr. 3445; Hearing Ex. 52, Stacy deposition transcript at 91), which trunks can only be monitored by BellSouth (Hoffmann, Tr. 3428).

BellSouth's performance pertaining to the blockage and completion of local calls from BellSouth's end users to TCG's network is of great importance to TCG and its customers (Hoffmann, Tr. 3425). Call blockage degrades the quality of service that TCG's end use customers experience. True parity requires that the number and percentage of blocked calls from BellSouth's customers to

TCG's customers be of no material difference than the number and percentage of blocked calls from BellSouth to BellSouth customers. A relatively high level of blocked calls is unacceptable to TCG and its customers (Hoffmann, Tr. 3424-25). The blockage issue is especially troublesome for TCG from a competitive standpoint because TCG's customers are not able to discern that the call blockage problem is caused by BellSouth (Hoffmann, Tr. 3425). Mr. Stacy acknowledged that BellSouth was aware of TCG's blocking problems before BellSouth filed its petition in this docket (Hearing Ex. 52, deposition transcript at 93).

Mr. Stacy's confidential Late-Filed Deposition Exhibit No. 6 (Hearing Ex. 52) provides conclusive evidence that BellSouth's provision of interconnection to TCG is substantially below parity. The percentage of blocked calls directed to TCG's network is excessive when compared with the percentage of blocking within BellSouth's network. Taking the data provided by Mr. Stacy in his confidential Late-Filed Deposition Exhibit No. 6 (Hearing Ex. 52) and performing a simple averaging of the blocking percentages for each study period shown for each (BellSouth tandem to TCG) trunk group yields an average blocking rate of 2.75% for all of the BellSouth tandem to TCG trunk groups, which does not even include any blockage that occurs in other parts of BellSouth's network. BellSouth, on the other hand, experiences a blocking percentage of "substantially less than 1%" (Hearing Ex. 52, deposition transcript of Stacy at 97).<sup>24</sup>

Mr. Stacy tried to shift the blame for this blockage, stating that TCG has the sole responsibility for insuring that BellSouth has installed adequate trunk capacity to carry the calls from BellSouth to TCG (Tr. 1530). However, Mr. Stacy's testimony conflicts with his previous testimony

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<sup>24</sup> Mr. Stacy testified that the percentage of blocked calls within BellSouth's network is "substantially less than 1%" (Hearing Ex. 52, deposition transcript of Stacy at 97).

that BellSouth manages connections where it has control over the number of trunks.<sup>25</sup> As Mr. Hoffmann explained, BellSouth has sole control over the adequacy of the trunk capacity (Hearing Ex. 118, deposition transcript at 12). TCG assists BellSouth in properly sizing the trunks by providing quarterly forecast reports to BellSouth as required by TCG's Interconnection Agreement (Hoffmann, Tr. 3456), and by conversing with BellSouth on a biweekly basis (Hoffmann, Tr. 3468). But, BellSouth has the best information regarding the traffic that it sends to TCG, and TCG has no way of knowing how many trunks are required to carry all of BellSouth's calls to its switch (Hoffmann, Tr. 3473). While Mr. Stacy testified that BellSouth monitors that traffic weekly, and that BellSouth even shares the traffic reports with carriers (Hearing Ex. 52, deposition transcript at 80), the record shows that it took BellSouth more than three months to provide trunk group blocking data to TCG once the blockage problem was discovered by TCG (Hearing Ex. 52, Stacy deposition transcript at 87-88). In essence, BellSouth possessed but withheld the only information that TCG could have relied upon to determine whether it needed to request additional trunks to alleviate a blocking problem. BellSouth's attempt to point the finger at TCG when BellSouth knew of the blockage problems and withheld relevant blockage data for over three months is ludicrous.

BellSouth may assert that Hearing Exhibit No. 59, the ARMIS Report that BellSouth filed with the FCC, demonstrates that there is no blockage in the Southeast LATA on the trunk groups that carry traffic from BellSouth's end office to BellSouth's access tandems. However, the ARMIS Report is inadequate to provide the basis for such a finding. In paragraph 255 of its Ameritech Order, the FCC provided guidelines for this Commission to use in its evaluation of blocking reports. At a minimum, the Report must provide information that permits the Commission to gauge the

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<sup>25</sup> Hearing Ex. 92, deposition transcript at 82.

impact of trunk blocking, preferably including the size of the trunk groups that are experiencing blockage, the percentage of calls blocked<sup>26</sup>, and a comparison of the re-routing that takes place on the LEC's network compared to re-routing for the ALECs. In that same paragraph the FCC concluded that a measurement of parity that should be demonstrated is a comparison of completion rates for calls that originate and terminate on the LEC's network to call completion rates for calls that originate on the LEC's network and terminate on ALECs' networks. It appears that the ARMIS Report does not include any of the data that the FCC requires.

The FCC has determined that a LEC "cannot meet its burden of proof without clearly establishing the relevance and meaning of the data it submits to rebut arguments made in the record" (Ameritech Order, at par. 61). Based upon that standard, the ARMIS Report fails to rebut TCG's blocking allegations. The record of this proceeding is devoid of any explanation as to what the Report purports to demonstrate. For example, there is no evidence that the trunk groups included in the Report are trunk groups carrying TCG's traffic. It also is unclear whether the Report measures the actual rate of blockage or the absolute number of calls blocked, which the FCC requires in a Section 271 proceeding.<sup>27</sup> Ameritech Order at par. 235. Although the sponsor of the Report provided a brief description of its contents, he provided very few details (Stacy, Tr. 1693-94). The only other witnesses<sup>28</sup> that were asked questions about the Report were not familiar with the Report

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<sup>26</sup> In paragraph 235, the FCC stated that the call blockage data must provide either the actual rate of blockage or the absolute number of calls blocked.

<sup>27</sup> It is doubtful that the Report provides the actual number of calls. The information in the Report is presented in a format similar to Mr. Stacy's late-filed deposition Exhibit No. 6, which did not report the number calls (Tr. 1555).

<sup>28</sup> Although BellSouth's counsel attempted to testify as to the contents of the Report, his unsworn statements regarding the definition of the term "OFFD" conflict with Mr. Stacy's

and were unable to explain what the Report measures or to otherwise substantiate the data or results purported to be shown by the Report (Hoffmann, Tr. 3449, 3471; Kouroupas, Tr. 3512).

Even if the ARMIS Report had been explained or supported by a witness familiar with the data and analysis used to compile the Report, it does not demonstrate parity between the blocking standards that BellSouth uses for calls within its own network as compared to calls destined for an ALEC's network. Although the record is scant regarding the ARMIS Report, we do know that the Report is specific to access tandem trunks (Stacy, Tr. 1695), which trunks "carry not only TCG's traffic, but all other traffic including BellSouth's." (Stacy, Tr. 1530). We also know that the Report does not include any blocking that occurs on the trunk between BellSouth's access tandem and TCG's facilities (Hearing Ex. 92, Stacy deposition transcript at 92). In addition, the Report most likely does not include blockage due to the incorrect translations that occur in BellSouth's switches (Hoffmann, Tr. 3471; see also Hearing Ex. 120, Reasons for Traffic Changes, May 7, 1997). It is evident that Hearing Exhibit No. 59 does not account for all of the potential blocking of calls directed to TCG.

The ARMIS Report only measures blockage that occurs on various pieces of BellSouth's network, specifically trunks. We know that traffic to TCG must travel through at least one trunk to reach a BellSouth switch, and through at least one more trunk before it reaches the access tandem (Hearing Ex. 6, BellSouth's Supplemental Response to Staff's Interrogatory No. 31). In some cases the traffic may even traverse two or more access or local tandem trunk groups between BellSouth's switch and the access tandem that serves TCG. Therefore, a blocking measurement must include more than trunk data. Mr. Stacy testified that BellSouth has the ability to produce more

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testimony, and otherwise do not constitute evidence (Stacy, Tr. 1555; Carver, Tr. 3459-60).

comprehensive data for blocking of TCG's traffic (Stacy, Hearing Ex. 52, transcript deposition at 93). BellSouth elected to forgo producing that information in this proceeding, and it has not produced any evidence that satisfies the FCC's guidelines<sup>29</sup> for demonstrating that call blocking is not discriminatory.

**ISSUE 3:** Has BellSouth provided nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(ii) and applicable rules promulgated by the FCC?

\*No. BellSouth has not demonstrated that it is providing nondiscriminatory access to network elements in accordance with the requirements of Sections 253(c)(3) and 252(d)(1) of the Act.\*

TCG adopts the posthearing brief responses of MCI and AT&T on Issue No. 3.

**ISSUE 3(a):** Has BellSouth developed performance standards and measurements? If so, are they being met?

\*No. BellSouth has not developed performance standards and measurements that would allow it to demonstrate its compliance with any of the Section 271 Competitive Checklist requirements.\*

In paragraph 212 of the Ameritech Order, the FCC required Ameritech to "ensure that its performance measurements are clearly defined, permit comparisons with Ameritech's retail operations, and are sufficiently disaggregated to permit meaningful comparisons." BellSouth's performance measurements fall far below these requirements. Until such time that adequate performance measures and benchmarks have been established for call blockage, call completion, and

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<sup>29</sup> Ameritech Order, at par. 235.

the other measures of parity interconnection as set forth in Mr. Kouroupas' Late Filed Deposition No. 3 (Hearing Ex. 123), BellSouth has not fulfilled its obligation to demonstrate parity and its Petition cannot be approved.

**ISSUE 4:**     **Has BellSouth provided nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of Section 224 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(iii) and applicable rules promulgated by the FCC?**

\*No. BellSouth has not met its burden of affirmatively demonstrating that it has provided nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of Section 224 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(iii) and applicable rules promulgated by the FCC.\*

**ISSUE 5:**     **Has BellSouth unbundled the local loop transmission between the central office and the customer's premises from local switching or other services, pursuant to Section 271(c)(2)(B)(iv) and applicable rules promulgated by the FCC?**

\*No. BellSouth has not met its burden of affirmatively demonstrating that it has unbundled the local loop transmission between the central office and the customer's premises from local switching or other services, pursuant to Section 271(c)(2)(B)(iv) and applicable rules promulgated by the FCC.\*

**ISSUE 6:**     **Has BellSouth unbundled the local transport on the trunk side of a wireline local exchange carrier switch from switching or other services, pursuant to Section 271(c)(2)(B)(v) and applicable rules promulgated by the FCC?**

\*No. BellSouth has not met its burden of affirmatively demonstrating that it has unbundled the local transport on the trunk side of a wireline local exchange carrier switch from switching or other services, pursuant to Section 271(c)(2)(B)(v) and applicable rules promulgated by the FCC.\*



**ISSUE 7: Has BellSouth provided unbundled local switching from transport, local loop transmission, or other services, pursuant to Section 271(c)(2)(B)(vi) and applicable rules promulgated by the FCC?**

\*No. BellSouth has not met its burden of affirmatively demonstrating that it has provided unbundled local switching from transport, local loop transmission, or other services, pursuant to Section 271(c)(2)(B)(vi) and applicable rules promulgated by the FCC.\*

**ISSUE 8: Has BellSouth provided nondiscriminatory access to the following, pursuant to Section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC:**

**(a) 911 and E911 services;**

\*TCG takes no position on this issue. However, BellSouth has the burden to affirmatively demonstrate that it has provided nondiscriminatory access to 911 and E911 services pursuant to Section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC.\*

**(b) directory assistance services to allow the other telecommunications carrier's customers to obtain telephone numbers; and,**

\*TCG takes no position on this issue. However, BellSouth has the burden to affirmatively demonstrate that it has provided nondiscriminatory access to directory assistance services to allow the other telecommunications carrier's customers to obtain telephone numbers in accordance with Section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC.\*

**(c) operator call completion services?**

\*TCG takes no position on this issue. However, BellSouth has the burden to affirmatively demonstrate that it has provided nondiscriminatory access to operator call completion services pursuant to Section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC.\*

**ISSUE 9: Has BellSouth provided white pages directory listings for customers of other telecommunications carrier's telephone exchange service, pursuant to Section 271(c)(2)(B)(viii) and applicable rules promulgated by the FCC?**